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2 A Partnership Including  
3 A Professional Corporation  
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7 Attorneys for Plaintiff

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 IN AND FOR THE COUNTY OF SAN DIEGO

10  
11 MCGREGOR SEA & AIR SERVICES  
12 (AMERICA) INC., A Delaware  
13 Corporation,

14 Plaintiff,

15 vs.

16 CINEMATRONICS, INCORPORATED,  
17 A California Corporation,

18 Defendant.

) CASE NO. 491479

)

) DECLARATION OF

) C. BRADLEY HALLEN IN

) OPPOSITION TO APPLICATION

) TO SET ASIDE RIGHT TO ATTACH

) ORDER, QUASH WRIT OF ATTACH-

) MENT, AND RELEASE ATTACHED

) PROPERTY

)

) DATE: SEPTEMBER 9, 1982

)

) TIME: 3:00 P.M.

)

) DEPT: 12

19 I, C. BRADLEY HALLEN, declare as follows:

20 1. I am an attorney licensed to practice law in the  
21 State of California and employed by plaintiff to process its  
22 claim for damages in the amount of \$92,829.01 against  
23 Cinematronics, Incorporated.

24 2. On September 3, 1982, I obtained a Right to  
25 Attach Order and Writ of Attachment from this Court. Instructions  
26 were given to the El Cajon Marshal's office that same day and  
27 levies of attachment were scheduled for September 8, 1982.

28 . . . . .

Report of Evidence  
SEP 9 - 1982  
I. SCHWARTZ

1           3. On September 8, 1982, I was notified that a  
2 keeper had been installed at Cinematronica, Incorporated  
3 pursuant to my instructions.

4           4. Subsequently, on September 8, 1982, I was con-  
5 tacted by counsel for defendant, Ralph Pray, Esq., who  
6 demanded that we withdraw the keeper forthwith or Chapter XI  
7 proceedings would be instituted.

8           5. Later in the day of September 8, 1982, I was  
9 notified by additional counsel for defendant, J. D. Hanson,  
10 that an ex-parte hearing on a motion to Set Aside Writ to  
11 Attach Order would be held in Department 12 of this Court at  
12 4:00 p.m. on September 8, 1982.

13           6. At 4:00 p.m. on September 8, 1982, I appeared  
14 at the ex-parte hearing wherein the matter was scheduled for  
15 further hearing on September 9, 1982, at 3:00 p.m. in  
16 Department 12 of the above-entitled court.

17           7. I have had insufficient time to obtain written  
18 declarations from the parties involved in this case. I have  
19 participated in telephone conversations with James P. Cesped,  
20 Senior Vice-President of plaintiff, and with W. J. Gonzales,  
21 manager of plaintiff's Los Angeles office which handled the  
22 import transactions in this case.

23           8. Based on information provided to me by these  
24 individuals, I am submitting this declaration to this Court.

25           9. The reason for my declaration in lieu of  
26 declarations of parties with first-hand knowledge is that  
27 less than 24-hours notice was given of this hearing.  
28 . . . . .

1           10. Both Mr. Cesped and Mr. Gonzales have informed  
2 me in telephonic conferences on September 8 and September 9,  
3 1982, of the following facts set forth in the ensuing numbered  
4 paragraphs of this declaration (pars. 11 through 24).

5           11. Both James P. Cesped and Will J. Gonzales attended  
6 the meeting at Cinematronics, Incorporated on June 29, 1982.

7           12. At the time of the meeting, Cinematronics,  
8 Incorporated was indebted to plaintiff in the amount of  
9 \$97,807.13. The terms of agreement by which Cinematronics,  
10 Incorporated had agreed to pay plaintiff as indicated in the  
11 verified complaint and declarations previously on file in this  
12 matter indicated that payment was to be made upon presentment  
13 of invoice, and in no event later than 15 days following  
14 presentment of invoice.

15           13. As of the June 29, 1982, meeting, no payments  
16 had been made on the Cinematronics' account to plaintiff  
17 later than April 22, 1982.

18           14. Defendant's account was, therefore, seriously  
19 in arrears as of June 29, 1982, which was the reason for the  
20 meeting.

21           15. The immediate payment of \$10,000, therefore, on  
22 June 29, 1982, was merely a partial payment on a pre-existing  
23 debt.

24           16. No understanding was reached as to additional  
25 payments in excess of the pre-existing debt or interest on  
26 said payments at the June 29, 1982, meeting.

27           . . . . .

28           . . . . .



1 17. No other consideration was offered or received  
2 in consideration for plaintiff's representation that collection  
3 efforts would be forestalled for a period of time.

4 18. In this meeting, Jimmie Pierce, Corporate  
5 President of Cinematronics, Incorporated, made the following  
6 representations: That the \$10,000 paid was an act of "goodwill"  
7 and not consideration for the extinguishment of an old obliga-  
8 tion; the debt would be paid; that Mr. Pierce was better at  
9 turning around businesses in trouble than in operating  
10 businesses which were not in trouble; that the officers of  
11 the corporation had cut back on personal expenses; that no  
12 salaries were being paid to corporate officers; that the  
13 problem contributing to the difficulties Cinematronics was  
14 undergoing was that the previous corporate president had made  
15 drastic errors in judgment in purchasing three million dollars  
16 worth of electronic equipment from Japan on an uncertain game  
17 whereas the corporation had never before extended itself in an  
18 amount more than \$100,000 for similar endeavors; that the  
19 bank was secured in its loans to defendant to the extent of  
20 some 2.2 million dollars and that the bank was threatening  
21 "foreclosure"; that only two of Cinematronics' creditors had  
22 cash involved, that McGregor Sea & Air Services (America) Inc.  
23 was one, and that payments would be made; that next to payroll  
24 and rent, McGregor Sea & Air Services (America) Inc.  
25 (hereinafter MSAS) was first in line; that if any inventory  
26 was sold, as opposed to receivables "trickling" in that cash  
27 payments would be made to MSAS; that Cinematronics had approxi-  
28 mately 2.2 million dollars in receivables out; that Cinematronics

1 had a one million dollar inventory on hand. Following the  
2 meeting on June 29, 1982, and subsequent thereto, plaintiff  
3 has learned the following through representations made to  
4 plaintiff by defendant: The bank is not in a secure position  
5 but is an unsecured creditor; sales of inventory have occurred  
6 with cash generated but no payments have been made to MSAS;  
7 large numbers of personnel have been released from employment  
8 whereas only a small amount had been released prior to the  
9 June 29, 1982, agreement according to representations made by  
10 defendant; that Security Pacific National Bank is in the  
11 process of "calling" its 3.2 million dollars in outstanding  
12 loan obligations.

13 19. Based on the information received as referenced  
14 in the proceeding paragraphs, on August 6, 1982, plaintiff  
15 advised defendant that it was unable to adhere to the under-  
16 standing arrived at, at the June 29, 1982, meeting based on  
17 new information which had developed and based on misrepresenta-  
18 tions which had been made previously.

19 20. Cinematronics at no time has offered to make  
20 further payments on the outstanding obligation which it  
21 acknowledges does exist by virtue of the "account stated"  
22 contained within the Jim Pierce letter dated June 29, 1982  
23 attached to defendant's application for its requested order.

24 21. Plaintiff only seeks to attach assets which  
25 "clearly exceed the amount necessary to satisfy the amount to  
26 be secured by the attachment." This was the order sought in  
27 the ex-parte application for right to attach and the order  
28 granted by this Court.

